to the defendant, the burden was on the plaintiff of showing that the loss was not due to him. *Gillis* v. *Cobe*, 59 N. E. Rep. 455. The decision is the more noteworthy, as it overrules an earlier Massachusetts case. *Hayward* v. *Leonard*, *supra*.

Although there are many *dicta* which support the plaintiff's contention, the result is justified by the principles which underlie the action. The builder is barred from any remedy on his contract and is seeking the aid of an action founded on the equitable rule that no one should be allowed to enrich himself at another's expense. *Britton* v. *Turner*, 6 N. H. 481. In such a case the contract is merely an incident. When the completed product is of no value to the defendant, the rule does not apply, and the plaintiff cannot recover for his labor. *Taft* v. *Inhabitants of Montague*, 14 Mass. 282. It is then obviously essential that he show a benefit to the defendant before he makes out even a *prima facie* cause of action. A hard case, of course, results when the article completed has little market value, although the cost of producing it is large, as, for instance, a building adapted only to one particular business. But if such a misfortune is to be avoided, it should be accomplished rather by relaxing the strictness of contract actions than by perverting the rules of quasi-contract.

INJUNCTION AGAINST DIVORCE SUIT IN ANOTHER JURISDICTION. — Although equity has not always asserted the power to interfere with suits in a foreign state, such a power has for some time been clearly recognized. *Lowe* v. *Baker*, Free. Ch. 125; *Lord Portarlington* v. *Soulby*, 3 Myl. & K. 104. If the suit has already been begun, an injunction can be obtained only under peculiar circumstances, which would make it highly unjust to allow its continuance. *Vail* v. *Knapp*, 49 Barb. 299. In a recent New Jersey case the defendant, a citizen of New Jersey, had begun an action for divorce in the courts of North Dakota. The wife, alleging that her husband's residence there was only colorable, and that he was about to practice a fraud upon the courts of that state, and upon herself, obtained an injunction against his proceeding further. *Kempson* v. *Kempson*, 58 N. J. Eq. 94. The issue of the injunction seems justifiable in view of the fact that the result of the foreign suit would in all probability, as was intended, be an avoidance of the laws of the parties' domicil. *Deshon* v. *Foster*, 4 Allen, 545. To compel the wife to undergo the difficulty and expense of fighting the action in a foreign jurisdiction would be highly unjust. *Kittle* v. *Kittle*, 8 Daly, 72. The injunction was properly served upon the defendant, who disregarded it, however, and obtained a final decree of divorce. He returned to New Jersey with a new wife, and was promptly committed for contempt. The Vice Chancellor then decreed a somewhat novel punishment; the defendant is fined, and is further to be imprisoned until he shall take proper proceedings to have the divorce decree set aside. *Kempson* v. *Kempson*, 48 Atl. Rep. 244 (N. J., Ch.). Upon an original application for an injunction to compel such proceedings the court would undoubtedly decline to interfere. This is not upon the ground that equity refuses to order a positive act to be done in a foreign jurisdiction, although intimations to that effect may be found. *Port Royal R. R. Co.* v. *Hammond*, 58 Ga. 523. The leading example of the exercise of such a power is *Penn* v. *Lord Baltimore*, 1 Ves. Sen. 444. Equity will issue an injunction however only where the act to be performed

is simple and direct, and where the continued supervision of the court is not essential to its successful accomplishment. *Blanchard* v. *Detroit, etc., R. R. Co.*, 31 Mich. 43, 54. These considerations are not applicable, however, to the present case. The defendant is guilty of contempt, and the court may well impose what conditions it pleases upon his release. It remains for the defendant to show to the satisfaction of the court that he has properly performed them. See *People* v. *Rogers*, 2 Paige, 103; *Elizabethtown, etc., R. R. Co.* v. *Ashland, etc., Ry. Co.*, 94 Ky. 478. The position of the new wife presents some interesting problems, but seems properly not to have affected the question of the defendant's punishment for his contempt.

The recent decisions of the Supreme Court of the United States, affirming the unfavorable view taken by the New Jersey courts of divorces similar to that obtained by the defendant in this case, remove any doubt as to the practical justice of the present decision.

PROPERTY EXEMPT FROM THE OPERATION OF THE STATUTE OF LIMITATIONS. — It has always been a doctrine of the common law that the Statute of Limitations does not run against the king. The basis of the rule is sound public policy, that the rights of the people should not be affected by the negligence of public officials. *United States* v. *Hoar*, 2 Mason, 311. Some doubt has arisen, however, as to the extent of the right. It is admitted that the Federal and the state governments are not affected by the running of the Statute, but there is a conflict as to whether municipalities are exempt. Some states hold that as a city is a compact body, and, therefore, as encroachments upon public rights are the more quickly observed and acted upon, there is no reason for exempting them. *City of Wheeling* v. *Campbell*, 12 W. Va. 36. But the weight of authority supports the view that as a city is a mere subdivision of the government in many respects, it should have all the protection that the other departments of the government enjoy. *Kopf* v. *Miller*, 101 Pa. St. 27; Dillon, Municipal Corp., 4th ed., § 675.

A novel extension of this rule has recently been made by the California court. By virtue of an act of Congress, the plaintiff railroad was granted a right of way. Later the defendant entered into exclusive possession of an unused portion of this way and held it adversely for the statutory period. The court held that as the land belonging to the railroad had been set apart for public purposes, it was exempt from the running of the Statute. *Southern Pac. Co.* v. *Hyatt*, 64 Pac. Rep. 272. The language of the court treats this as a case where the land over which the railroad runs has been granted away from the government, but the facts are so meagrely reported that it is not wholly clear. If the fee is vested in the government, the decision is clearly right. *United States* v. *Hoar*, *supra*. If on the other hand the land has been granted away, the decision may well be doubted. In an earlier California case, the railroad recovered under similar circumstances, but the question of the Statute was not raised. *Southern Pac. Co.* v. *Burr*, 86 Cal. 279. Beyond this, there seems to be no decision in point. There are, it is true, cases holding that a citizen may obtain a right of way over railroad tracks by prescription. *Gay* v. *Boston & Albany R. R.*, 141 Mass. 407. These cases may however be distinguished on the ground that the presumption of a grant,